Robert F. Kennedy Medical Center, a subsidiary of Catholic Healthcare West and Service Employees International Union, Local 399, AFL–CIO. Cases 21–CA–33110 and 21–CA–33152

December 20, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

On December 7, 1999, Administrative Law Judge Mary Miller Cracraft issued the attached decision. The Respondent filed exceptions, a supporting brief, an answering brief, and a reply brief. The Charging Party filed cross-exceptions, an answering brief, and a reply brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

We agree that the General Counsel established prima facie that the real reason for the discharge of the three employees was the fact that, on September 5, 1997, they made a concerted protest about a matter relating to their employment. See *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). In this regard, we rely, inter alia, on the fact that the Respondent's director, Jenkins, confronted two of the employees on September 10 and said that she felt "betrayed" by the protest. The discharge occurred on September 12.

The Respondent has not shown that it would have discharged them in any event for unprotected activity. In this regard, we do not pass on the issue of whether the employees' use of Company stationery (to set forth their protest) was beyond the bounds of Section 7.[2] Even assuming arguendo that it was, the Respondent has not shown that it would have fired them for that reason even if the letter had not contained the protest. Indeed, when Jenkins confronted the two employees on September 10, she did not even mention the use of Company stationery.

We recognize that the Respondent's handbook forbids use of Company stationery for nonofficial purposes. However, there is no showing that employees could be discharged for such conduct. And, even if there was, that is not the same as showing that employees would be discharged for that conduct.

Finally, there is no showing that any recipients of the letter reasonably believed that its contents reflected the views of the Respondent.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Robert F. Kennedy Medical Center, a subsidiary of Catholic Healthcare West, Hawthorne, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Julie B. Gutman, Esq., for the General Counsel.
Stephen P. Pepe, and *Mary P. Donlevey, Esqs. (O'Melveny & Myers),* of Los Angeles, California, for the Respondent.
Andrew L. Strom, Esq., of Los Angeles, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARY MILLER CRACRAFT, Administrative Law Judge. This case was tried in Los Angeles, California, on September 27 and 28, 1999. The charge in Case 21–CA–33110 (originally Case 31–CA–23291) was filed by Service Employees International Union, Local 399, AFL–CIO (the Union), on March 27, 1998. The charge in Case 21–CA–33152 (originally Case 31–CA–23266) was filed by the Union on March 11, 1998. The consolidated amended complaint issued on July 15, 1998. At issue is whether Robert F. Kennedy Medical Center, a subsidiary of Catholic Healthcare West (Respondent) violated Section 8(a)(1) of the Act[1] by discharging three of its employees because they wrote a letter on hospital stationery seeking assistance from staff physicians in preventing their layoff. Further at issue is whether Respondent created the impression that it was spying on its employees' union activities in violation of Section 8(a)(1) of the Act.

The parties were afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue the merits of their respective positions. On the entire record, including my observation of the demeanor of

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In her decision, the judge concluded that the Respondent violated Sec. 8(a)(1) of the Act by discharging three of its employees because they wrote a letter on hospital stationery seeking assistance from staff physicians in preventing their layoff. Member Liebman agrees with this outcome, but would not analyze this case under *Wright Line*, supra. See, e.g., *Neff-Perkins Co.*, 315 NLRB 1229 fn. 2 (1994); *Mast Advertising & Publishing*, 304 NLRB 819 (1991). The *Wright Line* analysis is appropriately used in cases that turn on the employer's motive. Here, however, it is undisputed that the three employees were terminated because of their writing a letter to the staff physicians. The Respondent concedes that the appeal to the staff physicians was protected concerted activity. Thus, the only issue is whether the use of the Respondent's stationery removed the activity from the Act's protection. Member Liebman agrees with the judge that using the Respondent's stationery was not so egregious as to deprive the employees of the Act's protection. See *Felix Industries*, 331 NLRB No. 12 (2000).

[1] As relevant to this proceeding, Sec. 8(a)(1) provides that it is an unfair labor practice for an employer to interfere with, restrain, or coerce its employees in the exercise of their right guaranteed by Sec. 7 of the Act to act together for their mutual aid and protection.

the witnesses,[2] and after considering the briefs filed by all counsel, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, is engaged in the operation of an acute care hospital in Hawthorne, California. In operating the hospital, Respondent annually purchases and receives goods valued in excess of $50,000 directly from points outside the State of California and annually derives gross revenues in excess of $500,000. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act.

II. LABOR ORGANIZATION STATUS

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. Facts Relating to the Discharges

In August 1997[3] Respondent decided to outsource its transcription department consisting of transcriptionists Laurie Neira and Raymona Harvey and transcriptionist secretary Tonia Babbitt. Neira, Harvey, and Babbitt were long-term employees with good to excellent work records.

Transcriptionists Neira and Harvey discussed the decision to outsource. Both believed that internal transcription offered better patient care. Both were also concerned about being laid off. Neira and Harvey voiced their concerns to one staff physician. Eventually, Neira and Harvey decided to appeal to the staff physicians to prevent their layoff. Accordingly, on Friday, September 5, Harvey typed a letter which she and Neira composed. Babbitt joined them and asked to be included. When the letter was completed, it was printed on Respondent's stationery. The three employees signed the letter, duplicated it, placed it in envelopes, affixed labels, and distributed it.

The letter states,

Dear Doctor,

> Are you aware that very soon the in-house Transcription department will no longer be in-house? All transcription will be contracted to an outside agency. The Transcriptionists (Raymona [Harvey] and Laurie [Neira]) will be laid-off and only Tonia [Babbitt], the Transcriptionist Secretary, will remain here at Robert F. Kennedy Medical Center for your assistance.
>
> So, will you join us in saving our jobs so that we may continue to provide you with the reliable and timely in-house transcription that is so vital for patient care?
>
> We would appreciate it if you would voice your opinion to Administration on our behalf in the preservation of your personalized dictation through the in-house Transcription department here at Robert F. Kennedy Medical Center.
>
> Your Transcriptionist:
>
> Laurie Neira, Transcriptionist
> Raymona Harvey, Transcriptionist
> Tonia Babbitt, Transcriptionist Secretary

There is no dispute that Respondent's stationery was readily available and routinely utilized by Neira, Harvey, and Babbitt for official business. For instance, Neira and Harvey prepared medical reports and letters for staff physicians. If the physician requested it, the letters were printed on Respondent's stationery. Medical reports were transmitted to physicians by the transcriptionists utilizing Respondent's stationery for the cover letters. Occasionally the transcriptionists added personal notes to the physicians on the cover letters. Babbitt printed the letters transcribed by Neira and Harvey on Respondent's stationery. Neira, Harvey, and Babbitt knew that the stationery was for official business.

Director of medical records, Mary Jo Jenkins, confronted Neira and Harvey on Wednesday, September 10. Jenkins stated that she felt personally betrayed. Jenkins did not mention use of Respondent's stationery as a factor in her disappointment.[4]

Respondent's policies provide for immediate discharge in serious cases. Lesser violations may result in a verbal or written warning, suspension, or discharge. In assessing the appropriateness of any discipline, Respondent considers the nature of the offense and the employee's work history. Director of Ancillary Services Louis Gregario, in charge of human resources, read the personnel files of Neira, Harvey, and Babbitt after learning of their letter. He met with Jenkins, Director of Administration Grant McArn, and Administrator and Chief Operating Officer Peter Aprato, to discuss the situation. Due to the seriousness of unauthorized use of Respondent's stationery and the danger of lawsuits and sanctions from Medicare and Medical potentially resulting from unauthorized use of the stationery, they determined to discharge the authors of the letter.

On September 12, Jenkins terminated Neira, Harvey, and Babbitt. Each was given the following termination notice:

> You are being terminated due to inappropriate behavior, specifically, per the employee handbook
>
> "Official use of the hospital name, whether it be through the use of hospital stationery or statements to the public or press, is only allowed for official hospital
>
> business. In all other instances, you must obtain proper authorization from Administration."
>
> You used hospital stationery for personal use and did not obtain prior approval.

Certainly, employees sometimes utilize hospital stationery as the most readily available paper at hand, for instance, when they need to make a note, share a recipe, or record a phone number. However, there is no evidence that supervisors were aware of such use and there is no evidence of any other employee utilization of Respondent's stationery for other than official business. The rule regarding use of Respondent's stationery had never been enforced prior to these three discharges. There is no evidence of any prior similar situation.

[2] Credibility resolutions have been made based on a review of the entire record and all exhibits in this proceeding. Witness demeanor and inherent probability of the testimony have been utilized to assess credibility. Testimony contrary to my findings has been discredited on some occasions because it was in conflict with credited testimony or documents or because it was inherently incredible and unworthy of belief.

[3] All dates hereafter are in 1997 unless otherwise referenced.

[4] These facts were related by Neira and Harvey, whom I credit. Jenkins did not testify.

B. Analytical Framework: Discharges

In *Andrex Industries Corp.*,[5] the Board recently articulated the following application of the General Counsel's initial burden pursuant to *Wright Line*:[6]

> [T]o set forth a violation under Section 8(a)(3), the General Counsel is required to show by a preponderance of the evidence that animus against protected conduct was a motivating factor in the employer's conduct. Once this showing has been made, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. To sustain his initial burden, the General Counsel must show
>
> > (1) that the employee was engaged in protected activity, (2) that the employer was aware of the activity, and (3) that the activity was a substantial or motivating reason for the employer's action. Motive may be demonstrated by circumstantial evidence as well as direct evidence and is a factual issue which the expertise of the Board is peculiarly suited to determine.
>
> *FPC Holdings, Inc. v. NLRB,* 64 F.3d 935, 942 (4th Cir. 1995), enfg. 314 NLRB 1169 (1994) (citations omitted).

Proof of the protected activity, employer knowledge of the activity, and employer animus toward the activity supports an inference that the employee's protected conduct was a motivating factor in the employer's action. The employer may then rebut the General Counsel's case by proving that animus played no part in its actions or the employer may demonstrate that the same personnel action would have taken place in any event.

C. Contentions Regarding the Discharges

Initially, counsel for the General Counsel notes that there is no dispute that the employees engaged in concerted activity in discussing the elimination of their transcription service and their layoffs or transfers and determining to appeal to the staff physicians for assistance. Counsel contends that the employees did not lose the protection of the Act because their concerted activity involved use of Respondent's stationery. Counsel contends that such protection is lost only when the employee's conduct is "so violent" or "of such character as to render [the employee] unfit for further service."[7] Counsel asserts that simply because legitimate concerted activity is accompanied by some "impropriety," does not rob the activity of the Act's protection. As to knowledge, counsel asserts that there is also no dispute that Respondent was aware of the activity upon receipt of the letter authored by the employees. Regarding animus, counsel for the General Counsel relies on an inference of animus to be drawn from the timing of the discharges and, additionally, notes that Jenkins' actions immediately after receipt of the letter evidenced animus toward the employees' actions and not toward their use of Respondent's stationery. Counsel also notes that Gregorio testified that the employees would probably have been disciplined whether they use hospital stationery or plain paper because they failed to use Respondent's internal remedies before appealing to the staff physicians.

Counsel for the General Counsel asserts that Respondent has not met its burden of establishing that the employees would have been terminated absent their protected concerted activity. Counsel notes that the prohibition against using Respondent's stationery is aimed at fraud, misrepresentation, and breach of patient confidentiality. Because the alleged discriminatees did not send the letter to the general public or the media, counsel contends that there is no breach of the essence of the prohibition. Moreover, counsel notes that no other employees have ever been disciplined for breach of the rule. Pointing to Respondent's disciplinary procedures, counsel asserts that the penalty of termination was unduly harsh and constituted a deviation from the progressive discipline practices of Respondent. Counsel further asserts that numerous cases of life threatening offenses received verbal, first, second, and final warnings and suspension while the alleged discriminatees were immediately discharged with no investigation, although their personnel files reflected long term employment with good to excellent work records.

Like counsel for the General Counsel, counsel for the Charging Party asserts that the General Counsel has sustained the initial burden of showing activity protected by the Act, knowledge of the activity, and animus. Counsel for the Charging Party asserts that Jenkins' statement of betrayal by the alleged discriminatees establishes animus. Counsel for the Charging Party asserts that Respondent has failed to show that it would have fired the alleged discriminatees for unauthorized use of its stationery regardless of the content of the letter. For instance, counsel contends that Respondent would need to show that unauthorized use of the stationery to invite staff physicians to a surprise birthday party for Aprato would also have resulted in discharge. Counsel asserts that any thoughtful application of the rule would take the content of a letter written on Respondent's stationery and the intended audience for the letter into account.

Counsel for the Charging Party notes that many other employees engaged in far worse offenses, some of them potentially life threatening, and these employees were not immediately discharged. Moreover, counsel notes that no investigation was made before the discharges and that Aprato uncharacteristically chose to be included in the decision. These factors also point to an unlawful motive to discharge.

Counsel for Respondent argues that the General Counsel did not sustain the initial burden to show protected concerted activity, employer knowledge of the activity, and that the protected activity was a motivating factor in the decision to terminate the employees. For instance, counsel asserts, relying principally on *Washington Adventist Hospital,* 291 NLRB 95, 102 (1988), that because the employees did not have authorization to utilize Respondent's stationery, the protection of the Act was lost as a result of the manner in which the employees chose to communicate their message. Moreover, even if the employees were engaged in protected, concerted activity, Respondent contends that the content of their letter played absolutely no part in the decision to terminate.

Assuming the General Counsel has sustained its initial burden, counsel for Respondent avers that Respondent produced

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[5] 328 NLRB 1279, 1281 (1999). Although the standard set forth in *Andrex Industries* specifically relates to the 8(a)(3) allegation in that case, the same standard applies in all cases turning on employer motivation. *Wright Line*, supra, 251 NLRB at 1089. The standard has been utilized in analyzing Sec. 8(a)(1) allegations of discharge. See, e.g., *Taylor & Gaskin, Inc.,* 277 NLRB 563 fn. 2 (1985).

[6] 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

[7] Counsel relies on *Caterpillar, Inc.,* 321 NLRB 1178, 1180 (1996) (vacated pursuant to settlement by order dated March 19, 1998); *Wolkerstorfer Co.,* 305 NLRB 592 fn. 2 (1991); and *Hawthorne Mazda,* 251 NLRB 313, 316 (1980), enfd. mem. 659 F.2d 1089 (9th Cir. 1981).

substantial uncontroverted evidence that the employees would have been terminated in any event. Counsel stresses that the employee handbook makes clear that use of the hospital name is only allowed for official hospital business. Counsel avers that Respondent has no progressive disciplinary policy. Rather, the handbook unequivocally notes that employees are at-will and may be terminated any time with or without cause. Counsel asserts that the handbook merely identifies potential reasons for immediate termination. The fact that violation of the rule against use of the hospital name is not mentioned as a cause for immediate discharge is not fatal because the handbook lists violations by way of example only. Counsel notes that unauthorized use of hospital stationery is tantamount to fraud because the communication appears to be official when in fact it is not. Counsel further notes that use of hospital stationery in an unauthorized manner could subject Respondent to lawsuits or sanctions under Medicare or Medical. For these reasons, counsel asserts that the employees would have been discharged in any event.

D. Analysis Regarding the Discharges

I find the initial burden to show the employees' activity was concerted and protected has been sustained. There is no dispute that the employees' actions were concerted and that Respondent knew the employees were acting together for their mutual aid or protection. Moreover, I find that the employees' actions were protected by the Act. Respondent's arguments regarding loss of protection due to utilization of official stationery are unavailing. It is only in extreme circumstances that concerted activity loses the protection of the Act. Such circumstances include public disparagement of the employer's product, violence, or conduct that contravenes the basic policies of the Act.[8] I find that use of Respondent's stationery is not such an egregious circumstance as to rob the employees of the Act's protection.[9] Finally, contrary to Respondent's assertion that Jenkins' statement of dismay that the employees betrayed her is too slender a reed upon which to find animus, I find that this statement alone is sufficient to support the requisite animus finding. Accordingly, I infer that unlawful motivation was a factor in the decision to terminate the employees.

Turning to Respondent's contention that the employees would have been fired in any event, I conclude that this has not been shown. Although Respondent disputes that its disciplinary system is "progressive," there is no dispute that discipline other than discharge may be imposed depending on the severity of the infraction. Respondent has utilized various degrees of discipline for seemingly serious infractions of its patient care policies. Such thoughtful, step by step application of disciplinary procedures was not, however, utilized in the case of these employees.

There is also no dispute that the employees in question here were long term employees who had excellent or good employment histories. Neira was a 16-year employee whose personnel file showed absolutely no prior discipline. Her performance evaluations were outstanding. Harvey had worked for Respondent for 7 years. She had excellent performance appraisals and no prior record of discipline. Babbitt was an 11-year employee who had received one verbal warning. She had very good performance evaluations.

Respondent's reliance on its absolute prohibition of utilizing official stationery for unofficial purposes as the reason for discharge is belied by the policy factors supporting the prohibition. The rule legitimately seeks to prohibit fraud, lawsuits due to unauthorized statements, leak of confidential patient information, or sanctions from Medicare or Medical. None of these dangers was posed by the letter authored by Neira, Harvey, and Babbitt. The letter was distributed only to staff physicians. It was not sent to the press or otherwise publicized.

Accordingly, I find that the employees would not have been discharged in any event. Respondent violated Section 8(a)(1) of the Act by discharging Neira, Harvey, and Babbitt because of their protected, concerted activities.

E. Facts Relating to Creating an Impression of Surveillance

In a newsletter distributed in March 1998 to all employees with their paychecks Aprato stated:

> I promised to keep you informed regarding union activity. SEIU Local 399 continues to hold meetings and visit with our employees at their homes. The union has asked some of our employees to distribute an Opinion Survey. We remind the employees that they must perform these activities on their own time. This rules applies to both the employee who is performing the activity, and the employee that is being solicited. If you have questions regarding this rule, please refer to our Employee Handbook section III, page 7.

At a later point, Aprato's comments continue:

> Question what [the Union] tell[s] you. Do not accept their word as fact. The only way you can judge for yourself is to get answers to your questions. Look at signed union contracts and see for yourself what the union has actually been able to secure in writing. Do they address your concerns in these contracts? We encourage you to ask questions and seek answers. Interestingly, the union does not want you to ask questions or get answers. In fact, we were told that at one union meeting, the employees who asked questions were quietly requested, by the union, to leave the meeting. Is this how they plan to represent you? We will continue to keep you informed as this issue progresses. In the mean time, please feel free to ask questions.

F. Authority Regarding Creating an Impression of Surveillance

When an employer creates the impression among its employees that it is watching or spying on their union activities, employees' future union activities, their future exercise of Section 7 rights, tend to be inhibited.[10] As the Board has noted,[11]

[8] See, e.g., *YMCA of Pikes Peak Region,* 291 NLRB 998 (1988), enfd. 914 F.2d 1442 (10th Cir. 1990), cert. denied 500 U.S. 904 (1991), relying on *NLRB v. Fansteel Metallurgical Corp.,* 306 U.S. 240 (1939); *NLRB v. Sands Mfg. Co.,* 306 U.S. 332 (1939).

[9] See, e.g., *Timekeeping Systems, Inc.,* 323 NLRB 244, 248 (1997) (employee did not lose protection of the Act by utilizing office e-mail system), relied upon by counsel for the General Counsel. Cf. *Washington Adventist Hospital,* 291 NLRB 95 fn. 1, 102 (1988) (employee who used e-mail system to supplant messages at more than 100 computer terminals in acute care hospital, thus, interrupting transmission regarding patient care not engaged in protected activity).

[10] See, e.g., *Link Mfg.*, 281 NLRB 294 (1986), enfd. mem. 840 F.2d 17 (6th Cir. 1988), cert. denied 488 U.S. 854 (1988).

[11] *Flexsteel Industries,* 311 NLRB 257 (1993); see also *Tres Estrellas de Oro,* 329 NLRB 50, 51 (1999).

> The idea behind finding "an impression of surveillance" as a violation of Section 8(a)(1) of the Act is that employees should be free to participate in union organizing campaigns without the fear that members of management are peering over their shoulders, taking note of who is involved in union activities, and in what particular ways.

Accordingly, the Board routinely finds that creation of the impression of surveillance violates Section 8(a)(1) of the Act. If the employer's statements would reasonably cause employees to believe that their activities have been under surveillance, the impression of surveillance is created.[12]

G. Contentions Regarding Creating an Impression of Surveillance

Counsel for the General Counsel and the Charging Party argue that the statements by Aprato suggested to employees that he was closely monitoring the degree and extent of their organizing efforts and activities. They note that Aprato states that he promised to keep employees informed regarding union activity and follows this with information obtained: the Union continues to hold meetings and continues to visit employees at their homes. Aprato informs employees that at one union meeting, employees who asked questions were requested to leave. Aprato concludes that he will continue to keep employees informed. Counsel argue that these statements clearly suggest to a reasonable employee that Respondent is either spying on union meetings or soliciting and receiving information about union meetings.

Counsel for Respondent argues that no employee would reasonably assume that their union activities were under surveillance based on the statements of Aprato. Counsel notes that the Union openly publicized their meetings. Counsel also notes that Aprato's statement does not convey any details of union activity or topics covered at the union meeting and does not identify who or how many individuals attended the meeting. Given these circumstances, counsel argues that there is not an impression of surveillance. Similarly, counsel argues that merely reporting what one has heard about union activities does not create an impression of surveillance.[13] Finally, counsel notes that Respondent consistently apprises its employees of work-related information and the promise to keep employees informed regarding further union activity was no more than Respondent's normal practice.

H. Analysis Regarding Creating an Impression of Surveillance

Aprato's words, reasonably understood, convey a clear message that he is monitoring union activity, has learned what the current union activities are, and will continue to monitor these activities and keep employees informed. Although Respondent relies on the openness of union activity at the facility, there is no showing that the union meetings were open meetings held in full view or with participation of Respondent. Moreover, the opinion surveys and meetings in employees homes are certainly conducted away from Respondent's facility. Accordingly, I find that employees would reasonably conclude that their union activities were being monitored.

CONCLUSIONS OF LAW

1. By discharging Laurie Neira, Tonia Babbitt, and Raymona Harvey because they engaged in concerted activities with each other and with other employees for the purposes of mutual aid and protection by sending letters to staff physicians soliciting their support regarding the planned layoff of transcriptions department employees, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.
2. By creating an impression among its employees that their union activities were under surveillance, Respondent violated Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having discriminatorily discharged employees, Respondent must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[14]

ORDER

The Respondent, Robert F. Kennedy Medical Center, a subsidiary of Catholic Healthcare West, Hawthorne, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee because they engaged in concerted activities with each other and with other employees for the purposes of mutual aid and protection.

(b) Creating an impression among its employees that their union activities were under surveillance.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Laurie Neira, Tonia Babbitt, and Raymona Harvey full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Laurie Neira, Tonia Babbitt, and Raymona Harvey whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

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[12] *United Charter Service,* 306 NLRB 150 (1992); *Yenkin-Majestic Paint Corp.*, 321 NLRB 387 (1996), enfd. 124 F.3d 202 (6th Cir. 1997).

[13] Counsel relies on *Clark Equipment Co.,* 278 NLRB 498, 503 (1986); *Silver State Disposal Co.,* 271 NLRB 486 (1984); *South Shore Hospital,* 229 NLRB 363 (1977), enfd. in relevant part 571 F.2d 677 (1st Cir. 1978); and *G.C. Murphy Co.,* 216 NLRB 785, 792 (1975).

[14] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Hawthorne, California, copies of the attached notice marked "Appendix."[15] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 12, 1997.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in concerted activities with each other and with other employees for the purposes of mutual aid and protection.

WE WILL NOT create an impression among you that your activities on behalf of Service Employees International Union, Local 399, AFL–CIO, are under surveillance.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Laurie Neira, Tonia Babbitt, and Raymona Harvey full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Laurie Neira, Tonia Babbitt, and Raymona Harvey whole for any loss or earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Laurie Neira, Tonia Babbitt, and Raymona Harvey, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

ROBERT F. KENNEDY MEDICAL CENTER, A SUBSIDIARY OF CATHOLIC HEALTHCARE WEST

[15] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."